



One Hundred Thirteenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

January 15, 2013

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20528

Dear Administrator Pistole:

Recently, the New York Times published an article discussing TSA's new uses for the Behavioral Detection Officer program. Under the rubric of "Managed Inclusion," TSA is testing the use of Behavior Detection Officers (BDOs) to identify passengers who not only appear to pose no threat to aviation security, but who also appear to deserve favorable treatment.¹

Based on the article, it appears that the selected passengers will be permitted to proceed beyond the checkpoint without undergoing certain normal security screening measures. In addition to being ushered into virtually unused PreCheck lanes, passengers selected by the BDOs need not remove their shoes or uncase their laptops. According to the article, after this new program undergoes testing at the Indianapolis and Tampa airports, it may be expanded to other airports.

During the 112th Congress, I wrote to you on several occasions regarding the scientific validity of the Screening of Passengers by Observation Technique (SPOT) program, an initiative in which BDOs purportedly assess the risk a passenger may pose based on visual observation and limited conversational interaction. In August 2010, I wrote to TSA expressing my concerns about the potential for SPOT to become a means for BDOs to engage in illegal practices such as racial profiling. In June 2011, the first media reports began to surface regarding allegations of racial profiling by BDOs using the SPOT program at Newark International Airport.²

Unfortunately, to date, there has been no scientific validation by an independent third party that would support and validate TSA's premise that a program comprising limited conversational interaction and visual observation would be capable of yielding sufficient information to determine whether an individual presents a risk to aviation security.

¹ Joe Sharkey. "TSA Experiments with Behavior Screening" January 8, 2013. New York Times.

² http://www.nytimes.com/2013/01/08/business/tsa-experiments-with-behavior-screening.html?_r=0. January 9, 2012.

² Report: Newark airport screeners targeted Mexicans and Dominicans, <http://www.cnn.com>, June 5, 2011.

At a hearing before the House Science, Space and Technology Committee, Dr. Philip Rubin, a former member of the Technical Advisory Committee (TAC) for SPOT, testified about the unlikely sufficiency of any report TSA produced to validate the SPOT program. As a member of the Advisory Committee that was asked to review the SPOT program, Dr. Rubin described the limited nature of TAC's evaluation of SPOT. He said:

“The advisory committee has not been asked to evaluate the overall SPOT program, nor has it been asked to evaluate the validity of indicators used in the program, not asked to evaluate consistency across measurement, field conditions, training issues, scientific foundations of the program, and/or behavioral detective methodologies, et cetera. In order to appropriately scientifically evaluate a program like SPOT, all of these and more would be needed”³.

Despite the lack of scientific evidence supporting the proposition that limited conversational interaction and brief observations can provide sufficient evidence of dangerousness, TSA has now developed a program that seems to rely on a notion that limited conversational interaction and brief observations can provide sufficient evidence of non-dangerousness. If one were to believe that SPOT training could effectively determine dangerousness, the Managed Inclusion program would require one to also believe that SPOT training could determine non-dangerousness. The belief that training to accomplish one purpose could also accomplish the opposite and inverse purpose begs credulity.

Moreover, given the lack of scientific validation that BDO's are capable of detecting the presence of an individual who requires either additional screening or removal from the aviation environment, it is unlikely that scientific validation exists to show that the use of the same methodology would enable BDOs to detect an individual who only requires minimal screening and expedited passage through the checkpoint.

Unfortunately, far from possessing the ability to determine individual risk at a glance, it appears that the intended purpose of the use of BDOs in the Managed Inclusion program is to assist in the expansion of the PreCheck Program.

In recent months, TSA has touted the expansion of TSA PreCheck—a program that allows expedited screening procedures available to some passengers at certain airports. By the end of 2012, TSA announced that it planned to pilot PreCheck at more than thirty airports in the United States.⁴ Through PreCheck, TSA determines if a passenger is eligible for expedited screening, only after a thorough background check is completed by TSA using information supplied by the passenger. In some cases, use of the PreCheck program is free of charge, however, passengers who choose to enroll in the Global Entry program and then accept PreCheck enrollment, are able to use both programs for a fee of \$100. When a passenger is approved for enrollment to the PreCheck program, that information is embedded in the barcode of the passenger's boarding pass

³ House Science, Space and Technology Subcommittee on Investigations and Oversight Holds a Hearing on the Transportation Security Administration's Passenger Screening Program. 112th Congress. April 6, 2011.

⁴ Transportation Security Administration. March 19, 2012. http://www.tsa.gov/what_we_do/escreening.shtm

as a PreCheck participant. TSA reads the barcode at designated checkpoints and the passenger may be referred to a lane where they will undergo expedited screening. Expedited screening under PreCheck eliminates the need for a passenger to remove several items, including: shoes, 3-1-1 compliant bags from carry-on, laptop from bag, light outerwear/jacket, and a belt.⁵

TSA PreCheck is a potentially valuable and efficient tool for screening trusted passengers because it is based on the prior vetting of information about a voluntarily enrolled passenger. PreCheck is based on the premise that additional verified information about a passenger permits authorities to assess the risk of each individual and make a determination about the level of screening required. By eliminating “known” travelers from the risk equation, PreCheck may decrease airport waiting times for all passengers.

The Managed Inclusion program confers all the benefits of PreCheck without requiring any of the burdens. Managed Inclusion passengers are not required to submit personal information for TSA vetting, pay a fee nor have bar codes embedded in a boarding pass. On the contrary, Managed Inclusion passengers are not “known” but instead are selected on an ad hoc basis by BDOs using unknown criteria that lack any scientifically valid foundation.

It seems that the Managed Inclusion program undermines the verified passenger information that is the cornerstone of the risk-based approach of the PreCheck program. To that end, rather than decrease risk, it would appear to randomly inject uncertainty into the expedited screening process.

Finally, it appears that Managed Inclusion was launched as a way to provide additional use of the PreCheck lanes. As noted by the New York Times:

“One reason for the expanded program, the agency’s administrator, John S. Pistole, said, is to “make sure that the T.S.A. PreCheck lanes are being fully utilized” throughout the day, rather than just at peak hours.”

Thus, it would seem that managed inclusion is to serve as both an enticement for a passenger to enroll in PreCheck and a method to make use of the human and technological resources devoted to underused PreCheck lanes. Such a rationale for the establishment of a “risk based program” is unacceptable.

Because I am troubled by the Managed Inclusion program, have yet to be provided with a scientific validation of the SPOT program, and am concerned about the resources committed to the PreCheck program, pursuant to Rule X (3) (g) and Rule XI of the Rules of the House of Representatives, I respectfully request that you provide the following information in writing no later than January 31, 2013.

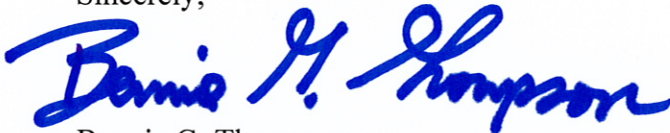
1. Scientific validation that would support the proposition that brief observations and casual conversations can yield sufficient information to determine whether a passenger presents a lack of risk.

⁵ Transportation Security Administration. January 14, 2012. <http://www.tsa.gov/tsa-pre%E2%9C%93%E2%84%A2/tsa-pre-check-TM-how-it-works> .

2. What role will the BDO program have with "Managed Inclusion" test program?
3. Timeline of the testing for the "Managed Inclusion" program, including a report outlining findings of TSA's testing observations.
4. What would warrant the expansion and institution of the "Managed Inclusion" program across more airports?
5. The utilization rate for the current PreCheck program and the expected effect of the "Managed Inclusion" on Precheck.
6. A copy of the training program for BDOs working within "Managed Inclusion."

Thank you for your prompt attention to this matter. If you have any questions or concerns regarding the information requested above, please contact Cherri Branson, Chief Counsel for Oversight, at 202-226-2616.

Sincerely,



Bennie G. Thompson
Ranking Member